

REMARKSI. Interview Summary

Applicants note with appreciation the telephone interview between Examiner Ark and the undersigned attorney for applicant on January 6, 2009. During the interview, each of the independent claims were discussed with respect to the Volk '102, Burgess '750, Su '516; and Woodruff '496 patents. It was agreed to amend the claims generally as set forth above to place the claims in allowable form.

II. Status of Claims

Claims 1-81 are pending in the present application. By this Amendment, Claims 20, 21, 63, 73 and 74 have been canceled; Claims 1-6, 9-10, 17, 19, 22, 23, 30, 36, 38, 46, 48-50, 60, 62, 64, 68, 70, 78, 80, and 81 have been amended.

III. Support for Claim Amendments

It is submitted that the amendments to the claims are supported by the application as filed and add no new matter.

IV. Section 112 Rejections and Claim Objections

Claims 2, 9, 23-29, 36, 46, 47 and 73 have been rejected under 35 U.S.C. § 112. Claim 73 has been canceled and Claims 2, 9, 23, 36, and 46 have been amended and it is submitted that Claims 2, 9, 23-29, 36, 46, and 47 comply with the requirements of Section 112.

Claims 62 and 70 have also been amended as suggested by the examiner.

V. Section 102/103 Rejections

Claims 1-4, 9, 12-14, 17, 30 31, 36, and 37 have been rejected under 35 U.S.C. § 102 over Volk '102; Claims 1-8, 10-18, 38-57, 60-63, 65-73 and 75-79 have been rejected under 35 U.S.C. § 103 over Burgess '750 in view of Su '516; Claims 9, 46, 47, 49, 58, 59, 61, 64, 69, 74 and 79 have been rejected under 35 U.S.C. § 103 over Burgess '750 in view of Su '516, and further in view of Woodruff '496; Claims 1-18 and 23-81 have been rejected under 35 U.S.C. § 103 over Burgess '750 in view of Woodruff '496; Claims 5-8, 18 and 57 have been rejected under 35 U.S.C. § 103 over Burgess '750 and Woodruff '496 and further in view of Su '516.

Independent Claims 1, 3, 17 and 19 have been amended to clarify (taking Claim 1 as an example) that the flag member is operative to be "movable from a first position enclosed within the body to a second position upward and out of the body." Claim 50 has been amended in like manner. Claim 38 has been amended such that "the displacement effectuating a signaling member moving from a first position enclosed within the body to a second position upward and out of the body for indicating the presence of the organism in the device." Claims 62 and 70 have been amended in like manner. Claim 80 has been amended to indicate that "with at least a portion of the signaling member being movable from a first position enclosed within the body to a second position out of the body."

Independent Claim 23 has been amended to clarify that "the passageway being transverse to the longitudinal axis of the body . . . the passageway having a diameter being dimensioned to permit travel of the subterranean organisms from the soil toward the material and being tapered from a wide diameter end proximate to the soil to a narrow diameter end proximate to the material." Claims 30, 80 and 81 have been amended in a like manner.

It is submitted that the claims as amended are distinguishable over the patents of record and should be allowable.

VI. CONCLUSION

Therefore it is respectfully submitted that Claims 1-19, 22-62, 64-72 and 75-81 are allowable and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

Dated: January 13, 2009

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